MARATHON OIL CO.

IBLA 82-43 Decided November 9, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding that oil and gas lease W 27727 expired at the end of its primary term.

Affirmed.

1. Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Extensions

Production of oil or gas pursuant to an approved communitization agreement is regarded as production for each lease committed to the agreement. A lease does not qualify for extension by reason of production at the end of its primary term where a communitization agreement associating the leased lands with a producing well on other lands is not filed with Geological Survey until after expiration of the lease.

APPEARANCES: Morris R. Massey, Esq., Casper, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Marathon Oil Company (Marathon) appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 25, 1981, holding that oil and gas lease W 27727 had expired at the end of its primary (10-year) term on March 31, 1981. Noncompetitive oil and gas leases are issued for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities. 30 U.S.C. § 226(e) (1976). Leases are also subject to extension for 2 years where actual drilling operations are being conducted and diligently prosecuted at the end of the term. 30 U.S.C. § 226(e); 43 CFR 3107.2-3. On February 27, 1981, appellant tendered advance rental in the amount of $ 1,280 for the 11th lease year. The subsequent

decision of BLM holding that the lease expired was based on the advice of Geological Survey (Survey) 1/ that there was no activity on the lease which would have qualified it for extension.

Effective April 1, 1971, BLM issued noncompetitive oil and gas lease to Betty Strange W 27727 for a term of 10 years. The lease covered the S 1/2 SE 1/4 of sec. 23, the S 1/2 SW 1/4 of sec. 24, the NW 1/4, S 1/2 SW 1/4 of sec. 25, and the NE 1/4, S 1/2 SE 1/4 of sec. 26, T. 44 N., R. 76 W., sixth principal meridian. Marathon was assigned a 100 percent working interest in the lease in February 1972. Appellant asserts on appeal that the oil and gas rights on the N 1/2 SE 1/4 sec. 26 are leased by Cities Service Company (Cities).

In its statement of reasons for appeal Marathon asserts that, pursuant to a joint operating agreement between Cities, as unit operator, and appellant, a well was commenced in the N 1/2 SE 1/4 of sec. 26, on or about November 18, 1980, and was completed as a producer of oil on or about January 18, 1981. Appellant further asserts that Cities and Marathon entered into a communitization agreement covering the aforementioned tract which was to become effective on September 1, 1980, and that the agreement was presented by Cities to Survey for approval on April 29, 1981. Marathon contends that approval of the communitization agreement was a ministerial act and that Survey should have approved it retroactively with an effective date before the expiration of the lease, thus making the lease subject to extension by reason of production. A copy of a letter attached to appellant's statement of reasons indicates that Survey returned the agreement to appellant contending that it had no authority to extend the lease because the agreement was not received until a month after the lease had expired.

In the situation where a separate tract cannot be independently developed and operated in conformity with an established well spacing program, the Secretary is authorized to approve the pooling of any lease or portion thereof with other lands under a communitization or drilling agreement providing for the apportionment of production among the separate tracts. 30 U.S.C. § 226(j) (1976); 43 CFR 3105.2-2. Operations or production pursuant to such an agreement shall be regarded as operations or production for each lease committed to the agreement. Accordingly, the issue presented by this appeal is whether the communitization agreement could be approved retroactively after expiration of the lease so as to qualify the lease for extension on the basis of production on another lease covered by the agreement where the agreement was not filed with Survey until after expiration of the lease.

[1] Where a lessee fails to file a communitization agreement associating leased lands with a producing well on other lands for approval with

1/ By Secretarial Order No. 3071, dated Jan. 19, 1982, the Secretary of the Interior established the Minerals Management Service (MMS) and transferred to MMS the minerals-related functions of the Conservation Division of the Geological Survey. 47 FR 4751 (Feb. 2, 1982).

Survey prior to the anniversary date of the lease and Survey does not approve such an agreement prior to this time the lease is not properly regarded as in a "producing" status on the anniversary date. Melvin A. Brown, 49 IBLA 234 (1980). Similarly, in Devon Corp., 57 IBLA 131 (1981), the Board held on appeal that where the lessee fails to file a communitization agreement associating the leased lands with a producing well on other lands for approval with Survey prior to the end of the primary term of the lease and where Survey does not approve such agreement prior to that time, the lease does not qualify for an extension. Counsel for appellant seeks to distinguish this appeal from the Devon Corp. case, supra, on the ground that appellant filed the communitization agreement with Survey about a month after expiration of the lease while the decision in Devon Corp. reflects that no communitization agreement was ever filed. However, such a distinction cannot be drawn from the case of Melvin A. Brown, supra, where a communitization agreement was filed with Survey, but not until after the lease had terminated, and hence the agreement was returned unapproved by Survey.

The Board has held that for the purpose of qualifying for a lease extension the determinative date of approval of the communitization agreement is the effective date of the approved agreement rather than the actual date it is signed by the authorized officer of Survey and, thus, the agreement may be approved retroactively after the expiration date of the lease with an effective date prior to the expiration date. Integrity Oil and Gas Co., 42 IBLA 222 (1979). However, no agreement may be held effective to extend a lease by production on communitized lands where it was not filed with Survey prior to the expiration date of lease. Kennedy and Mitchell, Inc., 68 IBLA 80 (1982); cf. Jones-O'Brien, Inc., 1 SEC 13, 85 I.D. 89 (1978) (Department has no authority to suspend operations and production under an oil and gas lease and extend the terms thereof where the application was not filed until after the lease expired).

In Harry D. Owen, 13 IBLA 33 (1973), the Board held that an oil and gas lease was properly terminated for non-payment of rent on the anniversary date where a communitization agreement linking such lease with leased land on which there was a producing well was not filed until several weeks after the lease had terminated by operation of law. In contrast, the Board found that a subsequent joinder of a unit agreement by a lessee was effective for purposes of extension by production within the unit when the lessees had complied with all the requirements for making a binding commitment of the interest including filing the necessary documents with Survey prior to the expiration of the lease. Bruce Anderson, 30 IBLA 179 (1977). The critical shortcoming of appellant in this case was the failure to file the agreement with Survey prior to lease expiration.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge